IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 18467 of 2002

Between:

V.Manaiah Goud S/o.Jangaiah
R/o.Ward No.4 , Sikh Chawani Colony,

Attapur, Rajendranagar Municipality , Ranga Reddy Dist.

..... PETITIONER

AND

1. The Govt Of A.P Rep by its Principal secretary`
   Revenue & (Excise-II) , Secretariat Building Hyderabad
2. The Commissioner , Prohibition & Excise
   Nampally , Hyderabad.
3. The Excise Superintendent
   Prohibition & Excise , RR.dist.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ order or direction declaring the action of the respondents in rejecting the formation and registration of Tappers Cooperative Society for Ward No.4, Sikh Chawani Colony, Attapur, Rajendranagar Municipality RR. District as illegal, arbitrary and opposed to excise policy and consequently direct the 3rd respondent to form and register Tapper Cooperative Society and grant licenses in terms of existing excise policy, without referring to the proceedings of the 2nd respondent in Cr.No.9975/2002/CPE/E2 , Dt: 29-06-2002.

Counsel for the Petitioner: Ms Padma, Advocate Representing MR. C. V. NAGARJUNA REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORAL ORDER:

1. The petitioner assails the proceedings issued by the second respondent dated 29.06.2002 rejecting the proposal submitted by the third respondent for sanction of New Tappers Cooperative Society (for short TCS) shop at Ward No. 4, Sikh Chawani Colony, Attapur, Rajendranagar Municipality, Ranga Reddy District, as well as the consequent proceedings of the third respondent dated 10.07.2002 intimating that formation of a New TCS is not permitted.

2. The petitioner claims that he belongs to tappers community and is a toddy tapper by profession. As Attapur coming under Ward No.4, Sikh Chawani Colony of Rajendranagar Municipality is not within the area of operation of any other Tappers Cooperative Society (TCS), the petitioner and 10 others applied to the third respondent seeking permission to form a new society and to grant a licence. Consequent on the application, the third respondent instructed the Prohibition and Excise Inspector concerned to conduct a tapping test on 06.06.2002 wherein 11 persons were declared eligible. Thereafter, despite the powers of grant of permission to form a new TCS inhering in the Excise Superintendent-third respondent, in view of the provisions of the A.P Excise Act, 1968, under the orders issued by the State Government in G.O. Ms. No. 234 Food and Agriculture (Coop-IV) Department dated 03.04.1979, the third respondent sent proposals to the second respondent through the District Collector, Ranga Reddy District and to the Deputy Commissioner, Prohibition and Excise, Hyderabad Division recommending for the approval of the request for formation of a new TCS at Attapur.

3. The second respondent by proceedings dated 29.06.2002 rejected the request of the petitioner for sanction of new TCS shop of ward No.4 of Sikh Chawani Colony of Rajendranagar Municipality for the following reasons recorded in the order:

> *"It would be difficult for the proposed tapper members to go over to the topes in which the trees are available, which are far of from their shop, stay there and tap and draw the toddy and transport to their shops, themselves. They need vehicles and receptacles for transportation of toddy. The yield of toddy*

from the allotted trees will be less making the shop unviable from economic point of view. Therefore, there is every possibility of manufacture of synthetic and adulterated toddy, which will be injurious to public health. As such formation of new TCS is not viable."

4. Consequently, the third respondent by the order dated 10.07.2002 communicated the order of the second respondent dated 29.6.2002 rejecting the request for formation of a new TCS. Contending that the second respondent is incompetent to exercise the powers of rejection of an application for a new TCS, as the said power inheres exclusively on the third respondent, the Writ Petition is filed.

5. An identical situation fell for the consideration of a Division Bench of this Court in W.A. Nos. 1116 and 1117 of 2001. By the common Judgment dated 01.07.2002, this Court declared that as the General power of the superintendence of the Prohibition and Excise Department, available under Section 3 of the A.P Prohibition and Excise Act, 1968 is a general power and as the power of the Superintendent of Prohibition and Excise under Section 3 of the A.P. Prohibition and Excise Act, 1968 read with Section 7 of A.P. Cooperative Societies Act, 1964 read with the orders of the State Government in G.O. Ms. No. 234 Food and Agriculture (Co.op-IV) Department dated 03.04.1979 constitutes a special empowerment to the Excise Superintendent concerned to permit formation of new Cooperative Societies, the second respondent could not exercise the powers of grant of approval or rejection in respect of the formation of a new TCS, in supersession of specifically conferred power of the Superintendent of Excise. The powers exercised by the Commissioner of Prohibition and Excise in derogation of the above principles stated by the Division Bench were invalidated by the Division Bench Judgment of this Court referred to supra.

6. In the case on hand, it is not in dispute that the power to permit formation of a new TCS inheres in the third respondent and not in the second respondent. Despite the fact that the second respondent has general powers of supervision and control of the administration of the Prohibition and Excise Department, such general powers do not extend to usurping the special power conferred on the Superintendent of Prohibition and Excise in the matter of considering requests for formation of new cooperative societies in particular i.e a TCS. However, in exercise of the powers of general control and supervision, the second respondent has ample powers and authority to issue instructions and general guidelines on the circumstances and

parameters within which the power of grant of permission to form a new TCS could be exercised by the Superintendent of Prohibition and Excise. It is necessary to imply such power in the second respondent, having regard to the fact that trade and commerce in alcoholic beverages is an inherently pernicious area of trade and potentially impacts the well being and health of the citizens. Frequent monitoring and control by the second respondent, who is consecrated a controlling power in matter of decisions of the Excise Department is essential to ensure that the grant of licences or permissions to open a new TCS or functioning of existing TCS does not lead to a serious detriment to the health and well being of the citizens.

7. On the above analysis, there is no escape from the conclusion that the order of the second respondent dated 29.06.2002 rejecting the third respondent proposals for formation of a new TCS in Ward No.4, Sikh Chawani Colony of Rajendranagar Municipality and the consequent order of third respondent dated 10.07.2002 are patently illegal and unsustainable and require invalidation and those orders are accordingly set aside. The third respondent shall now itself consider the application for formation of a new TCS at Ward No.4 of Sikh Chawani Colony of Rajendranagar Municipality for formation of a new TCS.

8. It is also urged that the reasons recorded by the second respondent in his order dated 29.06.2002 for rejecting the formation of a new TCS, namely that it would difficult for the members to go over to topes in which trees are available far away from their shops, stay there and tap and draw the toddy and transport to the shops is not a viable proposition as the distance from the trees and the shops would make it difficult to monitor synthetic and adulterated toddy, which injurious to public health, is an irrelevant and impermissible reason.

9. Smt Padma, learned counsel appearing for the petitioner strenuously contends that the Prohibition and Excise, Department had issued policy guidelines for the period 01.04.2000 to 31.03.2001 in G.O. Ms No.175, Revenue dated 31.03.2000. S.No.15 of the guidelines enable trees to be allotted to toddy Tappers Cooperative Society or for the trees for tappers section, locally or within the 20 kms from the periphery of the village where the toddy tapers cooperative society/tree for tapper scheme is situate. The guideline No.15 also states that there shall be no distance limit for toddy Tappers Cooperative Societies/tree for tapper scheme located in a Municipality or Municipal Corporation. As Rajendranagar is a municipality, the distance limit is not applicable in view of the Guideline No.15 and therefore, the

reason given by the Commissioner of Prohibition and Excise is illegal and contrary to the Guideline No.15.

10. The above contention urged on behalf of the petitioner does not *ipso facto* commend the acceptance of this Court. The guidelines issued as the excise policy guidelines for the period 1.4.2000 to 31.3.2001 in G.O. Ms.No.175, dated 31.3.2000 are merely instructions to serve as a guidance for the regulatory authority under the statute to exercise the powers of licensing, control and regulation of the excise licences granted under the provisions of the Act. They do not *ipso facto*, in the context of the inherently pernicious trade of liquor in alcoholic beverages constitutes a complete code in the matter of grant of licences. Where the licensing authority empowered under the provisions of the Act to permit a new TCS is satisfied that in a given fact situation the distance between the shop of a new TCS and the place where trees are available is such as to pose a danger to the life and well being of the citizens, the licensing authority would not only be well within its powers but is statutorily obligated to exercise his discretion to refuse to grant a licence or permission to start a new TCS. In the exercise of such powers, the respondent should ever be conscious that it is the health and well being of the people that is paramount and not the desire of any individual to indulge in trade and business in liquor. The general well being of the people is a legitimate public interest concern that operates as a brooding omnipresence on the discretionary calculus of the respondents. The contention urged on behalf of the petitioner with regard to the Guideline No.15 of the Excise Policy Guidelines for a period of 2000-2001 is thus misconceived.

10 In the result, the petition is allowed to the extent of setting aside the orders of the second and third respondents dated 29.6.2002 and 10.7.2002 respectively while directing the third respondent to consider the application for formation of a new TCS in Ward No.4, Attapur Mandal, Rajendranagar Municipality in accordance with the provisions of law, the extent guidelines and Excise policy as well as the observations of this court above.

11. The Writ Petition is allowed with the above observations. No costs.

23-11-2004

kvrm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty third day of November, two thousand and four.

To

1. The Principal Secretary, The Govt Of A.P.
   Revenue & (Excise-II) , Secretariat Building Hyderabad
2. The Commissioner , Prohibition & Excise
   Nampally , Hyderabad.
3. The Excise Superintendent
   Prohibition & Excise , Ranga Reddy District.

4. 2 CCs to GP for Prohibition and Excise, High Court Buildings,

Hyderabad (OUT)

5. 2 CC copies.